

Article 13.

Jurisdiction of Conservation Agencies.

§ 113-131. Resources belong to public; stewardship of conservation agencies; grant and delegation of powers; injunctive relief.

(a) The marine and estuarine and wildlife resources of the State belong to the people of the State as a whole. The Department and the Wildlife Resources Commission are charged with stewardship of these resources.

(b) The following powers are hereby granted to the Department and the Wildlife Resources Commission and may be delegated to the Fisheries Director and the Executive Director:

- (1) Comment on and object to permit applications submitted to State agencies which may affect the public trust resources in the land and water areas subject to their respective management duties so as to conserve and protect the public trust rights in such land and water areas;
- (2) Investigate alleged encroachments upon, usurpations of, or other actions in violation of the public trust rights of the people of the State; and
- (3) Initiate contested case proceedings under Chapter 150B for review of permit decisions by State agencies which will adversely affect the public trust rights of the people of the State or initiate civil actions to remove or restrain any unlawful or unauthorized encroachment upon, usurpation of, or any other violation of the public trust rights of the people of the State or legal rights of access to such public trust areas.

(c) Whenever there exists reasonable cause to believe that any person or other legal entity has unlawfully encroached upon, usurped, or otherwise violated the public trust rights of the people of the State or legal rights of access to such public trust areas, a civil action may be instituted by the responsible agency for injunctive relief to restrain the violation and for a mandatory preliminary injunction to restore the resources to an undisturbed condition. The action shall be brought in the superior court of the county in which the violation occurred. The institution of an action for injunctive relief under this section shall not relieve any party to such proceeding from any civil or criminal penalty otherwise prescribed for the violation.

(d) The Attorney General shall act as the attorney for the agencies and shall initiate actions in the name of and at the request of the Department or the Wildlife Resources Commission.

(e) In this section, the term "public trust resources" means land and water areas, both public and private, subject to public trust rights as that term is defined in G.S. 1-45.1.

(f) Notwithstanding the provisions of this section, a county or city may adopt and enforce ordinances as provided in G.S. 153A-145.3 or G.S. 160A-205, respectively. (1965, c. 957, s. 2; 1973, c. 1262, s. 18; 1987, c. 641, s. 14; 2013-384, s. 4(b); 2015-70, s. 2.)

§ 113-132. Jurisdiction of fisheries agencies.

(a) The Marine Fisheries Commission has jurisdiction over the conservation of marine and estuarine resources. Except as may be otherwise provided by law, it has jurisdiction over all activities connected with the conservation and regulation of marine and estuarine resources, including the regulation of aquaculture facilities as defined in G.S. 106-758 which cultivate or rear marine and estuarine resources.

(b) The Wildlife Resources Commission has jurisdiction over the conservation of wildlife resources. Except as may be otherwise provided by law, it has jurisdiction over all activities connected with the conservation and regulation of wildlife resources.

(c) Notwithstanding the provisions of this Article, this Subchapter does not give the Marine Fisheries Commission or the Wildlife Resources Commission jurisdiction over matters clearly within the jurisdiction vested in the Department of Agriculture and Consumer Services, the North Carolina Pesticide Board, the Commission for Public Health, the Environmental Management Commission, or other division of the Department regulating air or water pollution.

(d) To the extent that the grant of jurisdiction to the Marine Fisheries Commission and the Wildlife Resources Commission may overlap, the Marine Fisheries Commission and the Wildlife Resources Commission are granted concurrent jurisdiction. In cases of conflict between actions taken or regulations promulgated by either agency, as respects the activities of the other, pursuant to the dominant purpose of such jurisdiction, the Marine Fisheries Commission and the Wildlife Resources Commission are empowered to make agreements concerning the harmonious settlement of such conflict in the best interests of the conservation of the marine and estuarine and wildlife resources of the State. In the event the Marine Fisheries Commission and the Wildlife Resources Commission cannot agree, the Governor is empowered to resolve the differences.

(e) Those coastal fishing waters in which are found a significant number of freshwater fish, as agreed upon by the Marine Fisheries Commission and the Wildlife Resources Commission, may be denominated joint fishing waters. These waters are deemed coastal fishing waters from the standpoint of laws and regulations administered by the Department and are deemed inland fishing waters from the standpoint of laws and regulations administered by the Wildlife Resources Commission. The Marine Fisheries Commission and the Wildlife Resources Commission may make joint regulations governing the responsibilities of each agency and modifying the applicability of licensing and other regulatory provisions as may be necessary for rational and compatible management of the marine and estuarine and wildlife resources in joint fishing waters.

(f) The granting of jurisdiction in this section pertains to the power of agencies to enact regulations and ordinances. Nothing in this section or in G.S. 113-138 is designed to prohibit law-enforcement officers who would otherwise have jurisdiction from making arrests or in any manner enforcing the provisions of this Subchapter. (1965, c. 957, s. 2; 1973, c. 476, s. 128; c. 1262, ss. 18, 28, 38; 1977, c. 771, s. 4; 1979, c. 830, s. 1; 1987, c. 641, s. 5; 1989, c. 281, s. 3; 1997-261, s. 109; 2007-182, s. 2.)

§ 113-133. Abolition of local coastal fishing laws.

The enjoyment of the marine and estuarine resources of the State belongs to the people of the State as a whole and is not properly the subject of local regulation. As the Department is charged with administering the governing statutes and adopting rules in a manner to reconcile as equitably as may be the various competing interests of the people as regards these resources, considering the interests of those whose livelihood depends upon full and wise use of renewable and nonrenewable resources and also the interests of the many whose approach is recreational, all special, local, and private acts and ordinances regulating the conservation of marine and estuarine resources are repealed. Nothing in this section is intended to invalidate local legislation or local ordinances which exercise valid powers over subjects other than the conservation of marine and estuarine resources, even though an incidental effect may consist of an overlapping or conflict of jurisdiction as to some particular provision not essential to the conservation objectives set out in this Subchapter. (1965, c. 957, s. 2; 1987, c. 827, s. 96.)

§ 113-133.1. Limitations upon local regulation of wildlife resources; certain local acts retained.

(a) The enjoyment of the wildlife resources of the State belongs to all of the people of the State.

(b) The Wildlife Resources Commission is charged with administering the governing statutes in a manner to serve as equitably as may be the various competing interests of the people regarding wildlife resources, considering the interests of those whose livelihood depends upon full and wise use of renewable resources and the interests of the many whose approach is recreational. Thus, except as provided in subsection (e), all special, local, and private acts and ordinances enacted prior to the ratification date of the act creating this section regulating the conservation of wildlife resources are repealed. Nothing in this section is intended to invalidate local legislation or local ordinances which exercise valid powers over subjects other than the conservation of wildlife resources, even though an incidental effect may consist of an overlapping or conflict of jurisdiction as to some particular provision not essential to the conservation objectives set out in this Subchapter. In particular, this section does not repeal local acts which restrict hunting primarily for the purpose of protecting travelers on the highway, landowners, or other persons who may be endangered or affected by hunters' weapons or ammunition or whose property may be damaged.

(c) This Subchapter is intended to express State policy relating to the conservation of wildlife resources. Nothing in this section is intended to repeal or prevent the enactment of any city or county ordinance otherwise validly authorized which has only a minor and incidental impact on the conservation of marine and estuarine and wildlife resources. This section does not repeal G.S. 153A-127, G.S. 153A-131, G.S. 160A-182, G.S. 160A-187, and G.S. 160A-188, nor any local act establishing bird sanctuaries, except that local authorities operating bird sanctuaries may not regulate the taking of game or otherwise abrogate valid laws and regulations pertaining to the conservation of wildlife resources.

(d) Nothing in this Subchapter is intended to repeal or abridge the regulatory authority of the Game Commission of Currituck County or the Dare County Game and Wildlife Commission.

(e) Because of strong community interest expressed in their retention, the local acts or portions of local acts listed in this section are not repealed. The following local acts are retained to the extent they apply to the county for which listed:

Alleghany: Session Laws 1951, Chapter 665; Session Laws 1977, Chapter 526; Session Laws 1979, Chapter 556.

Anson: Former G.S. 113-111, as amended by Session Laws 1955, Chapter 286.

Ashe: Former G.S. 113-111; Session Laws 1951, Chapter 665.

Avery: Former G.S. 113-122.

Beaufort: Session Laws 1947, Chapter 466, as amended by Session Laws 1979, Chapter 219; Session Laws 1957, Chapter 1364; Session Laws 1971, Chapter 173.

Bertie: Session Laws 1955, Chapter 1376; Session Laws 1975, Chapter 287.

Bladen: Public-Local Laws 1933, Chapter 550, Section 2 (as it pertains to fox season); Session Laws 1961, Chapter 348 (as it applies to Bladen residents fishing in Robeson County); Session Laws 1961, Chapter 1023; Session Laws 1971, Chapter 384.

Brunswick: Session Laws 1975, Chapter 218.

Buncombe: Public-Local Laws 1933, Chapter 308.

Burke: Public-Local Laws 1921, Chapter 454; Public-Local Laws 1921 (Extra Session), Chapter 213, Section 3 (with respect to fox seasons); Public-Local Laws 1933, Chapter 422, Section 3; Session Laws 1977, Chapter 636.

Caldwell: Former G.S. 113-122; Session Laws 1977, Chapter 636; Session Laws 1979, Chapter 507.

Camden: Session Laws 1955, Chapter 362 (to the extent it applies to inland fishing waters); Session Laws 1967, Chapter 441.

Carteret: Session Laws 1955, Chapter 1036; Session Laws 1977, Chapter 695.

Caswell: Public-Local Laws 1933, Chapter 311; Public-Local Laws 1937, Chapter 411.

Catawba: Former G.S. 113-111, as amended by Session Laws 1955, Chapter 1037.

Chatham: Public-Local Laws 1937 Chapter 236; Session Laws 1963, Chapter 271.

Chowan: Session Laws 1979, Chapter 184; Session Laws 1979, Chapter 582.

Cleveland: Public Laws 1907, Chapter 388; Session Laws 1951, Chapter 1101; Session Laws 1979, Chapter 587.

Columbus: Session Laws 1951, Chapter 492, as amended by Session Laws 1955, Chapter 506.

Craven: Session Laws 1971, Chapter 273, as amended by Session Laws 1971, Chapter 629.

Cumberland: Session Laws 1975, Chapter 748; Session Laws 1977, Chapter 471.

Dare: Session Laws 1973, Chapter 259.

Duplin: Session Laws 1965, Chapter 774; Session Laws 1973 (Second Session 1974), Chapter 1266; Session Laws 1979, Chapter 466.

Edgecombe: Session Laws 1961, Chapter 408.

Gates: Session Laws 1959, Chapter 298; Session Laws 1975, Chapter 269; Session Laws 1975, Chapter 748.

Granville: Session Laws 1963, Chapter 670.

Greene: Session Laws 1975, Chapter 219, Sections 1 and 2; Session Laws 1979, Chapter 360.

Halifax: Public-Local Laws 1925, Chapter 571, Section 3 (with respect to fox-hunting seasons); Session Laws 1947, Chapter 954; Session Laws 1955, Chapter 1376.

Haywood: Former G.S. 113-111, as modified by Session Laws 1963, Chapter 322.

Henderson: Former G.S. 113-111.

Hertford: Session Laws 1959, Chapter 298; Session Laws 1975, Chapter 269; Session Laws 1975, Chapter 748; Session Laws 1977, Chapter 67.

Hoke: Session Laws 1963, Chapter 267.

Hyde: Public-Local Laws 1929, Chapter 354, Section 1 (as it relates to foxes); Session Laws 1951, Chapter 932.

Iredell: Session Laws 1979, Chapter 577.

Jackson: Session Laws 1965, Chapter 765.

Johnston: Session Laws 1975, Chapter 342.

Jones: Session Laws 1979, Chapter 441.

Lee: Session Laws 1963, Chapter 271; Session Laws 1977, Chapter 636.

Lenoir: Session Laws 1979, Chapter 441.

Lincoln: Public-Local Laws 1925, Chapter 449, Sections 1 and 2; Session Laws 1955, Chapter 878.

Madison: Public-Local Laws 1925, Chapter 418, Section 4; Session Laws 1951, Chapter 1040.

Martin: Session Laws 1955, Chapter 1376; Session Laws 1977, Chapter 636.

Montgomery: Session Laws 1977 (Second Session 1978), Chapter 1142, Section 2.

Nash: Session Laws 1961, Chapter 408.

New Hanover: Session Laws 1971, Chapter 559; Session Laws 1975, Chapter 95.

Northampton: Session Laws 1955, Chapter 1376; Session Laws 1975, Chapter 269; Session Laws 1975, Chapter 748; Session Laws 1977, Chapter 67; Session Laws 1979, Chapter 548.

Orange: Public-Local Laws 1913, Chapter 547.

Pamlico: Session Laws 1977, Chapter 636.

Pender: Session Laws 1961, Chapter 333; Session Laws 1967, Chapter 229; Session Laws 1969, Chapter 258, as amended by Session Laws 1973, Chapter 420; Session Laws 1977, Chapter 585, as amended by Session Laws 1985, Chapter 421; Session Laws 1977, Chapter 805; Session Laws 1979, Chapter 546.

Perquimans: Former G.S. 113-111; Session Laws 1973, Chapter 160; Session Laws 1973, Chapter 264.

Polk: Session Laws 1975, Chapter 269, as amended by Session Laws 1977, Chapter 167.

Randolph: Public-Local Laws 1941, Chapter 246; Session Laws 1947, Chapter 920.

Robeson: Public-Local Laws 1924 (Extra Session), Chapter 92; Session Laws 1961, Chapter 348.

Rockingham: Former G.S. 113-111; Public-Local Laws 1933, Chapter 310.

Rowan: Session Laws 1975, Chapter 269, as amended by Session Laws 1977, Chapter 106, and Session Laws 1977, Chapter 500; Session Laws 1979, Chapter 556.

Sampson: Session Laws 1979, Chapter 373.

Scotland: Session Laws 1959, Chapter 1143; Session Laws 1977, Chapter 436.

Stokes: Former G.S. 113-111; Public-Local Laws 1933, Chapter 310; Session Laws 1979, Chapter 556.

Surry: Public-Local Laws 1925, Chapter 474, Section 6 (as it pertains to fox seasons); Session Laws 1975, Chapter 269, as amended by Session Laws 1977, Chapter 167.

Swain: Public-Local Laws 1935, Chapter 52; Session Laws 1953, Chapter 270; Session Laws 1965, Chapter 765.

Transylvania: Public Laws 1935, Chapter 107, Section 2, as amended by Public Laws 1935, Chapter 238.

Tyrrell: Former G.S. 113-111; Session Laws 1953, Chapter 685.

Wake: Session Laws 1973 (Second Session 1974), Chapter 1382.

Washington: Session Laws 1947, Chapter 620.

Wayne: Session Laws 1975, Chapter 269; Session Laws 1975, Chapter 342, as amended by Session Laws 1977, Chapter 43; Session Laws 1975, Chapter 343, as amended by Session Laws 1977, Chapter 45; Session Laws 1977, Chapter 695.

Wilkes: Former G.S. 113-111, as amended by Session Laws 1971, Chapter 385; Session Laws 1951, Chapter 665; Session Laws 1973, Chapter 106; Session Laws 1979, Chapter 507.

Yadkin: Former G.S. 113-111, as amended by Session Laws 1953, Chapter 199; Session Laws 1979, Chapter 507.

Yancey: Session Laws 1965, Chapter 522.

(f) The Wildlife Resources Commission is directed to review periodically all local acts affecting conservation of wildlife resources and notify local authorities and the General Assembly as to those that:

- (1) Substantially duplicate provisions of this Subchapter.
- (2) Seriously conflict with conservation policies set out in this Subchapter.
- (3) Seriously conflict with conservation policies developed for the people of this State as a whole by the Wildlife Resources Commission.

(g) Notwithstanding G.S. 113-133.1(b), Chapter 565 of the Session Laws of 1977 is retained in effect. The following local conservation acts which specify that they must be specifically repealed are so repealed: Chapters 434 and 441 of the Session Laws of 1977. To provide for their retention or repeal in accordance with provisions applying to all other local wildlife acts, the following acts are amended to repeal the cited sections: Section 11, Chapter 258,

Session Laws of 1969; and Section 4, Chapter 585, Session Laws of 1977. (1979, c. 830, ss. 1, 14; 1979, 2nd Sess., c. 1285, ss. 2, 11; c. 1324, s. 2; 1981, c. 249, s. 2; c. 250, s. 2; 1983, c. 109, s. 2; c. 487, s. 2; 1985, c. 112, s. 1; c. 302, s. 1; c. 689, s. 27; 1986, c. 893, s. 4; 1987, c. 33, s. 4; c. 131, ss. 4, 5; c. 245, s. 2; c. 282, s. 16; 1987 (Reg. Sess., 1988), c. 955, s. 4; 1989, c. 80, s. 2; 1989 (Reg. Sess., 1990), c. 837, s. 2; 1993, c. 65, s. 1; c. 221, s. 3; 1995, c. 509, s. 55; 1997-456, s. 26; 1997-496, s. 18; 2006-21, s. 2; 2006-226, s. 20; 2009-89, s. 1; 2014-115, s. 8; 2018-10, s. 2(b).)

§ 113-134. Rules.

The Marine Fisheries Commission and the Wildlife Resources Commission may, within their jurisdictional limitations imposed by this Article, adopt rules implementing this Subchapter. (1915, c. 84, s. 21; 1917, c. 290, s. 7; C.S., 1878; 1925, c. 168, s. 2; 1935, c. 35; 1945, c. 776; 1953, cc. 774, 1251; 1963, c. 1097, s. 1; 1965, c. 957, s. 2; 1973, c. 1262, s. 28; 1987, c. 827, s. 97.)

§ 113-134.1. Jurisdiction over marine fisheries resources in Atlantic Ocean.

The Marine Fisheries Commission is directed to exercise all regulatory authority over the conservation of marine fisheries resources in the Atlantic Ocean to the seaward extent of the State jurisdiction over the resources as now or hereafter defined. Marine fisheries inspectors may enforce these regulations and all other provisions of law applicable under the authority granted in this section in the same manner and with the same powers elsewhere granted them as enforcement officers. (1973, c. 1315; 1977, c. 771, s. 4; 1979, c. 830, s. 1; 1987, c. 641, ss. 5, 8.)

§ 113-135. General penalties for violating Subchapter or rules; increased penalty for prior convictions; interpretive provisions.

(a) Any person who violates any provision of this Subchapter or any rule adopted by the Marine Fisheries Commission or the Wildlife Resources Commission, as appropriate, pursuant to the authority of this Subchapter, is guilty of a misdemeanor except that punishment for violation of the rules of the Wildlife Resources Commission is limited as set forth in G.S. 113-135.1. Fishing without a license in violation of G.S. 113-174.1(a) or G.S. 113-270.1B(a) is punishable as an infraction. Otherwise, unless a different level of punishment is elsewhere set out, anyone convicted of a misdemeanor under this section is punishable as follows:

- (1) For a first conviction, as a Class 3 misdemeanor.
- (2) For a second or subsequent conviction within three years, as a Class 2 misdemeanor.

(b) In interpreting this section, provisions elsewhere in this Subchapter making an offense a misdemeanor "punishable in the discretion of the court" must be considered to set a different level of punishment, to be interpreted in the light of G.S. 14-3 or any equivalent or successor statute. Noncriminal sanctions, however, such as license revocation or suspension, and exercise of powers auxiliary to criminal prosecution, such as seizure of property involved in the commission of an offense, do not constitute different levels of punishment so as to oust criminal liability. Any previous conviction of an offense under this Subchapter, or under rules authorized by it, serves to increase the punishment under subsection (a) even though for a different offense than the second or subsequent one.

(c) For the purposes of this Subchapter, violations of laws or rules administered by the Wildlife Resources Commission under any former general or local law replaced by the present provisions of this Subchapter are deemed to be violations of laws or rules under this Subchapter. (1965, c. 957, s. 2; 1973, c. 1262, s. 28; 1979, c. 830, s. 1; 1987, c. 827, s. 98; 1991, c. 176, s. 1;

c. 761, s. 50.5; 1993, c. 539, s. 836; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 209, s. 3; 2013-360, s. 18B.14(m); 2013-385, s. 6.)

§ 113-135.1. Limitation upon penalty for offense created by rules of Wildlife Resources Commission in certain instances.

(a) To prevent unsuspecting members of the public from being subject to harsh criminal penalties for offenses created by rules of the Wildlife Resources Commission, the penalty for an offense that is solely a violation of rules of the Wildlife Resources Commission is limited to a fine of twenty-five dollars (\$25.00) except as follows:

- (1) Offenses set out in subsection (b) of this section are punishable as set forth in G.S. 113-135 or other sections of the General Statutes.
 - (2) A person who parks a vehicle in violation of a rule regulating the parking of vehicles at boating access or boating launch areas is responsible for an infraction and shall pay a fine of fifty dollars (\$50.00).
- (b) The limitation upon penalty does not apply to any rule violation:
- (1) Punishable under G.S. 113-294 or otherwise involving aggravating elements that result in a greater punishment than provided by G.S. 113-135;
 - (2) That involves a defendant subject to the collection-license provisions of G.S. 113-272.4 or who is a dealer as defined in G.S. 113-273; or
 - (3) Relating to seasons, bag limits, creel limits, taking fish other than with hook and line, buying or selling wildlife, possessing or transporting live wildlife, taking wildlife at night or with the aid of a conveyance, or falconry. (1979, c. 830, s. 1; 1987, c. 827, s. 98; 2005-164, s. 1; 2012-200, s. 19.)

§ 113-136. Enforcement authority of inspectors and protectors; refusal to obey or allow inspection by inspectors and protectors.

(a) Inspectors and protectors are granted the powers of peace officers anywhere in this State, and beyond its boundaries to the extent provided by law, in enforcing all matters within their respective subject-matter jurisdiction as set out in this section.

(b) The jurisdiction of inspectors extends to all matters within the jurisdiction of the Department set out in this Subchapter, Part 5D of Article 7 of Chapter 143B of the General Statutes, Article 5 of Chapter 76 of the General Statutes, and Article 2 of Chapter 77 of the General Statutes, and to all other matters within the jurisdiction of the Department which it directs inspectors to enforce. In addition, inspectors have jurisdiction over all offenses involving property of or leased to or managed by the Department in connection with the conservation of marine and estuarine resources.

(c) The jurisdiction of protectors extends to all matters within the jurisdiction of the Wildlife Resources Commission, whether set out in this Chapter, Chapter 75A, Chapter 143, Chapter 143B, or elsewhere. The Wildlife Resources Commission is specifically granted jurisdiction over all aspects of:

- (1) Boating and water safety;
- (2) Hunting and trapping;
- (3) Fishing, exclusive of fishing under the jurisdiction of the Marine Fisheries Commission; and
- (4) Activities in woodlands and on inland waters governed by G.S. 106-908 to G.S. 106-910.

In addition, protectors have jurisdiction over all offenses involving property of or leased by the Wildlife Resources Commission or occurring on wildlife refuges, game lands, or boating and fishing access areas managed by the Wildlife Resources Commission. The authority of protectors over offenses on public hunting grounds is governed by the jurisdiction granted the Commission in G.S. 113-264(c).

(d) Inspectors and protectors are additionally authorized to arrest without warrant under the terms of G.S. 15A-401(b) for felonies, for breaches of the peace, for assaults upon them or in their presence, and for other offenses evincing a flouting of their authority as enforcement officers or constituting a threat to public peace and order which would tend to subvert the authority of the State if ignored. In particular, they are authorized, subject to the direction of the administrative superiors, to arrest for violations of G.S. 14-223, 14-225, 14-269, and 14-277.

(d1) In addition to law enforcement authority granted elsewhere, a protector has the authority to enforce criminal laws under the following circumstances:

- (1) When the protector has probable cause to believe that a person committed a criminal offense in his presence and at the time of the violation the protector is engaged in the enforcement of laws otherwise within his jurisdiction; or
- (2) When the protector is asked to provide temporary assistance by the head of a State or local law enforcement agency or his designee and the request is within the scope of the agency's subject matter jurisdiction.

While acting pursuant to this subsection, a protector shall have the same powers invested in law enforcement officers by statute or common law. When acting pursuant to (2) of this subsection a protector shall not be considered an officer, employee, or agent for the state or local law enforcement agency or designee asking for temporary assistance. Nothing in this subsection shall be construed to expand the authority of protectors to initiate or conduct an independent investigation into violations of criminal laws outside the scope of their subject matter or territorial jurisdiction.

(e) Inspectors and protectors may serve arrest warrants, search warrants, orders for arrest, criminal summonses, subpoenas, and all other process connected with any cases within their subject-matter jurisdiction. In the exercise of their law enforcement powers, inspectors are subject to provisions relating to police officers in general set out in Chapter 15, Chapter 15A, and elsewhere.

(f) Inspectors and protectors are authorized to stop temporarily any persons they reasonably believe to be engaging in activity regulated by their respective agencies to determine whether such activity is being conducted within the requirements of the law, including license requirements. If the person stopped is in a motor vehicle being driven at the time and the inspector or protector in question is also in a motor vehicle, the inspector or protector is required to sound a siren or activate a special light, bell, horn, or exhaust whistle approved for law-enforcement vehicles under the provisions of G.S. 20-125(b) or 20-125(c).

(g) Protectors may not temporarily stop or inspect vehicles proceeding along primary highways of the State without clear evidence that someone within the vehicle is or has recently been engaged in an activity regulated by the Wildlife Resources Commission. Inspectors may temporarily stop vehicles, boats, airplanes, and other conveyances upon reasonable grounds to believe that they are transporting seafood products; they are authorized to inspect any seafood products being transported to determine whether they were taken in accordance with law and to require exhibition of any applicable license, receipts, permits, bills of lading, or other identification required to accompany such seafood products.

(h), (i) Repealed by Session Laws 1979, c. 830, s. 1.

(j) The refusal of any person to stop in obedience to the directions of an inspector or protector acting under the authority of this section is unlawful. A violation of this subsection is a Class 3 misdemeanor and may include a fine of not less than fifty dollars (\$50.00).

(k) It is unlawful to refuse to exhibit upon request by any inspector, protector, or other law enforcement officer any item required to be carried by any law or rule as to which inspectors or protectors have enforcement jurisdiction. The items that must be exhibited include boating safety or other equipment or any license, permit, tax receipt, certificate, or identification. It is unlawful to refuse to allow inspectors, protectors, or other law enforcement officers to inspect weapons or equipment if the officer reasonably believes them to be possessed incident to an activity regulated by any law or rule as to which inspectors and protectors have enforcement jurisdiction and the officer has a reasonable suspicion that a violation has been committed, except that an officer may inspect a shotgun to confirm whether it is plugged or unplugged without a reasonable suspicion that a violation has been committed. It is unlawful to refuse to allow inspectors, protectors, or other law enforcement officers to inspect fish or wildlife for the purpose of ensuring compliance with bag limits and size limits. Except as authorized by G.S. 113-137, nothing in this section gives an inspector, protector, or other law enforcement officer the authority to inspect, in the absence of a person in apparent control of the item to be inspected, any of the following:

(1) Weapons.

(2) Equipment, except for equipment left unattended in the normal operation of the equipment, including, but not limited to, traps, trot lines, crab pots, and fox pens.

(3) Fish.

(4) Wildlife.

(l) Nothing in this section authorizes searches within the curtilage of a dwelling or of the living quarters of a vessel in contravention of constitutional prohibitions against unreasonable searches and seizures. (1915, c. 84, s. 6; 1917, c. 290, s. 2; C.S., s. 1885; 1935, c. 118; 1957, c. 1423, s. 2; 1965, c. 957, s. 2; 1973, c. 1262, ss. 18, 28, 86; c. 1286, s. 17; c. 1297; 1977, c. 771, s. 4; 1979, c. 830, s. 1; 1987, c. 641, ss. 20, 22; c. 827, s. 98; 1991, c. 730, s. 1; 1997-80, s. 5; 1998-225, ss. 3.1, 3.2; 2011-145, s. 13.25(xx); 2015-263, s. 35(a).)

§ 113-137. Search on arrest; seizure and confiscation of property; disposition of confiscated property.

(a) Every inspector or protector who arrests a person for an offense as to which he has enforcement jurisdiction is authorized to search the person arrested and the surrounding area for weapons and for fruits, instrumentalities, and evidence of any crime for which the person arrested is or might have been arrested.

(b) Every inspector or protector who issues a citation instead of arresting a person, in cases in which the inspector or protector is authorized to arrest, may seize all lawfully discovered evidence, fruits, and instrumentalities of any crime as to which he has arrest jurisdiction and probable cause. When live fish are returned to public fishing bottoms or public waters, the inspector or protector shall state on the citation the quantity returned.

(c) Every inspector or protector who in the lawful pursuit of his duties has probable cause for believing he has discovered a violation of the law over which he has jurisdiction may seize in connection therewith any fish, wildlife, weapons, equipment, vessels, or other evidence, fruits, or instrumentalities of the crime, notwithstanding the absence of any person in the immediate area

subject to arrest or the failure or inability of the inspector or protector to capture or otherwise take custody of the person guilty of the violation in question. Where the owner of such property satisfies the Secretary or the Executive Director, as the case may be, of his ownership and that he had no knowledge or culpability in regard to the offense involving the use of his property, such property must be returned to the owner. If after due diligence on the part of employees of the Department or the Wildlife Resources Commission, as the case may be, the identity or whereabouts of the violator or of the owner of the property seized cannot be determined, such property may be sold by the Department or the Wildlife Resources Commission in accordance with the provisions of this section.

(d) The Marine Fisheries Commission and the Wildlife Resources Commission may provide by rule for summary disposition of live or perishable fish or wildlife seized by an inspector or protector. If the property seized consists of live fish which may again be placed to the benefit of the public on public fishing bottoms or in public waters, the inspector or protector may require the person in possession of the seized live fish to transport it the distance necessary to effect placement on appropriate bottoms or waters. In the event of refusal by the person in question to transport the fish, the inspector or protector must take appropriate steps to effect the transportation. The steps may include seizure of any conveyance or vessel of the person refusing to transport the fish if the conveyance or vessel was one on which the fish were located or was used to take or transport the fish. When a conveyance or vessel is seized, it is to be safeguarded by the inspector or protector seizing it pending trial and it becomes subject to the orders of the court. Transportation costs borne by the Department or by the Wildlife Resources Commission, as the case may be, may be collected by the agency from the proceeds of the sale of any other property of the defendant seized and sold in accordance with the provisions of this section.

Except as provided in subsection (g), when the seizure consists of edible fish or wildlife which is not alive, may not live, or may not otherwise benefit conservation objectives if again placed on open lands, on public fishing bottoms, or in public fishing waters, the inspector or protector must dispose of the property in a charitable or noncommercial manner in accordance with the directions of his administrative superiors.

(e) Except as otherwise specifically provided in this section, all property seized must be safeguarded pending trial by the inspector or protector initiating the prosecution. Upon a conviction the property seized in connection with the offense in question is subject to the disposition ordered by the court. Upon an acquittal, property seized must be returned to the defendant or established owner, except:

- (1) Where the property was summarily disposed of in accordance with subsection (d);
- (2) Where possession of the property by the person to whom it otherwise would be returned would constitute a crime; and
- (3) Where the property seized has been sold in accordance with subsection (g). In this event the net proceeds of the sale must be returned to the defendant or established owner, as the case may be.

Where property seized summarily under subsection (d) is not available for return, an acquitted defendant or established owner is entitled to no compensation where there was probable cause for the action taken. Within 20 days of the final court adjudication of a citation, the Department or the Wildlife Resources Commission shall notify any acquitted defendant or established owner of its duly established procedures whereby reimbursement may be sought for live fish seized summarily under subsection (d) that is not available for return. Any action or proceeding to

recover compensation must be begun within 30 days after receipt of the notice of applicable procedures. After the expiration of this period of limitation, no right or action or claim for compensation shall be asserted.

In safeguarding property seized pending trial, an inspector or protector is authorized in his discretion, subject to orders of his administrative superiors, to make his own provisions for storage or safekeeping or to deposit the property with the sheriff of the county in which the trial is to be held for custody pending trial. In the event the mode of safekeeping reasonably selected by the inspector or protector entails a storage or handling charge, such charge is to be paid as follows:

- (1) By the defendant if he is convicted but the court nevertheless orders the return of the property to the defendant;
- (2) From the proceeds of the sale of the property if the property is sold under court order or in accordance with the provisions of this section; or
- (3) By the Department or by the Wildlife Resources Commission, as the case may be, if no other provision for payment exists.

(f) Subject to orders of his administrative superiors, an inspector or protector in his discretion may leave property which he is authorized to seize in the possession of the defendant with the understanding that such property will be subject to the orders of the court upon disposition of the case. Willful failure or inexcusable neglect of the defendant to keep such property subject to the orders of the court is a Class 1 misdemeanor. In exercising his discretion, the inspector or protector should not permit property to be retained by the defendant if there is any substantial risk of its being used by the defendant in further unlawful activity.

(g) Where a prosecution involving seized saleable fish is pending and such fish are perishable or seasonal, the inspector or protector may apply to the court in which the trial is pending for an order permitting sale prior to trial. As used in this subsection, seasonal fish are those which command a higher price at one season than at another so that economic loss may occur if there is a delay in the time of sale. When ordered by the court, such sale prior to trial must be conducted in accordance with the order of the court or in accordance with the provisions of this section. The net proceeds of such sale are to be deposited with the court and are subject to the same disposition as would have been applicable to other types of property seized. Where sale is not lawful for public health reasons or otherwise not practicable or where prosecution is not pending, disposal of the fish is in accordance with subsection (d).

(h) Pending trial, the defendant or the established owner of any nonperishable and nonconsumable property seized may apply to the court designated to try the offense for return of the property. The property must be returned pending trial if:

- (1) The court is satisfied that return of the property will not facilitate further violations of the law; and
- (2) The claimant posts a bond for return of the property at trial in an amount double the value of the property as assessed by the court.

(i) Upon conviction of any defendant for a violation of the laws or rules administered by the Department or the Wildlife Resources Commission under the authority of this Subchapter, the court in its discretion may order the confiscation of all weapons, equipment, vessels, conveyances, fish, wildlife, and other evidence, fruits, and instrumentalities of the offense in question, whether or not seized or made subject to the orders of the court pending trial. If the confiscated property is lawfully saleable, it must be sold; otherwise it must be disposed of in a manner authorized in this section. Unless otherwise specified in the order of the court, sales are to be held by the Department or the Wildlife Resources Commission, as the case may be.

The Department and the Wildlife Resources Commission may administratively provide for an orderly public sale procedure of property which it may sell under this section. The procedure may include turning the property to be sold over to some other agency for sale, provided that the provisions of subsection (j) are complied with and there is proper accounting for the net proceeds of the sale. In the case of property that cannot lawfully be sold or is unlikely to sell for a sufficient amount to offset the costs of sale, the Department and the Wildlife Resources Commission may provide either for destruction of the property or legitimate utilization of the property by some public agency.

(j) Except as provided in subsection (d), if property is seized under subsection (c) or it appears that a person not a defendant has an interest in any property to be sold, destroyed, or otherwise disposed of, the Department and the Wildlife Resources Commission must provide for public notice of the description of the property and the circumstances of its seizure for a sufficient period prior to the time set for sale or other disposition to allow innocent owners or lienholders to assert their claims. The validity of claims are to be determined by the trial court in the event there is or has been a prosecution in connection with the seizure of the property. If there has been no prosecution and none is pending, the validity of claims must be determined by the Secretary or by the Executive Director, as the case may be. When there has been a sale under subsection (g), the provisions of this subsection apply to the net proceeds of the sale.

(k) Except as provided in subsection (j) and in subdivision (3) of the first paragraph of subsection (e), the net proceeds of all sales made pursuant to this section must be deposited in the school fund of the county in which the property was seized. (1915, c. 84, s. 6; 1917, c. 290, s. 2; C.S., s. 1885; 1935, c. 118; 1953, c. 1134; 1957, c. 1423, s. 2; 1961, c. 1189, s. 4; 1965, c. 957, s. 2; 1973, c. 1262, ss. 18, 28; 1979, c. 830, s. 1; 1983 (Reg. Sess., 1984), c. 1083, ss. 1-3; 1987, c. 827, s. 98; 1993, c. 539, s. 837; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 113-138. Enforcement jurisdiction of special conservation officers.

(a) The Wildlife Resources Commission by rule may confer law-enforcement powers over matters within its jurisdiction with respect to wildlife resources conservation laws and rules within its jurisdiction upon the employees of the United States Fish and Wildlife Service, and the Marine Fisheries Commission may confer law-enforcement powers over matters within its jurisdiction with respect to marine and estuarine resources conservation laws and rules upon the employees of the National Marine Fisheries Service, who:

- (1) Possess special law-enforcement jurisdiction that would not otherwise extend to the subject matter of this Subchapter;
- (2) Are assigned during the duration of such appointment to duty stations within North Carolina; and
- (3) Take the oath required of public officers before an officer authorized to administer oaths.

These conferred powers do not constitute an appointment of any officer to an additional office.

(b) The Marine Fisheries Commission and Wildlife Resources Commission shall limit the exercise of this authority to situations when:

- (1) The best interests of the conservation of marine and estuarine and wildlife resources managed by the respective State and federal agencies are being adversely affected by restrictions upon jurisdictional subject matter that limit law-enforcement authority; and

- (2) The best interests of the conservation of marine and estuarine and wildlife resources managed by the adopting Commission will benefit by conferring law-enforcement authority on the employees of the United States Fish and Wildlife Service or the National Marine Fisheries Service.

(c) The enabling rule shall specify the particular officers or class of officers upon whom the law-enforcement powers are conferred and the geographic areas within which the special enforcement officers can exercise the law-enforcement powers over matters within the jurisdiction of the adopting Commission. The conferred powers may be used only during the scope of employment of the special conservation officers.

(d) Unless otherwise provided by the enabling rule, such special enforcement officers shall have the same jurisdiction and powers with respect to resource conservation and the same rights, privileges and immunities (including those relating to the defense of civil actions and payment of judgments) as the State officers in addition to those the federal officer normally possesses. (1965, c. 957, s. 2; 1973, c. 1262, ss. 18, 28; 1977, c. 771, s. 4; 1983, c. 484; 1987, c. 827, s. 98; 1991 (Reg. Sess., 1992), c. 890, s. 5.)

§ 113-139. Repealed by Session Laws 1979, c. 830, s. 1.

§ 113-140. Warning tickets.

(a) In enforcing the laws and rules within their subject matter jurisdiction, wildlife protectors and marine fisheries inspectors may, in accordance with the criteria of this section, issue warning tickets to offenders instead of initiating criminal prosecutions.

(b) To secure uniformity of enforcement, the Executive Director and the Director of the Division of Marine Fisheries may administratively promulgate standards consistent with subsection (c) providing that warning tickets may or may not be issued with respect to particular offenses, classes of offenses, or ways of committing offenses.

(c) A protector or inspector may issue a warning ticket only if all of the following conditions are met:

- (1) The protector or inspector is convinced that the offense was not intentional.
- (2) The offense is not of a kind or committed in a manner as to which warning tickets have been prohibited by the Executive Director or the Director of the Division of Marine Fisheries.
- (3) The conduct of the offender was not calculated to result in any significant destruction of wildlife or fisheries resources.
- (4) The conduct of the offender did not constitute a hazard to the public.

A warning ticket may not be issued if the offender has previously been charged with or issued a warning ticket for a similar offense.

(d) If any law-enforcement officer with jurisdiction over the offense or if any employee of the Wildlife Resources Commission or the Department learns that under the criteria of this section a warning ticket was inappropriately issued to an offender, he must take action to secure initiation of prosecution for the appropriate charge or charges unless barred by the statute of limitations or unless prosecution is not otherwise feasible because of unavailability of evidence or necessary witnesses.

(e) Before any warning tickets are issued, the Executive Director or the Director of the Division of Marine Fisheries must institute a procedure to ensure an accurate accounting for and recording of all warning tickets issued. This procedure may include use of prenumbered tickets

and immediate notation of issuance of the warning ticket on each appropriate license or permit issued by the Wildlife Resources Commission or Department held by the offender. The Executive Director or the Director of the Division of Marine Fisheries may also provide for issuance of new, replacement, or renewal licenses and permits bearing the notation. The licenses covered by this subsection include certificates of number for motorboats.

(f) This section does not entitle any person who has committed an offense with the right to be issued a warning ticket. That issuance of a warning ticket may be appropriate under the criteria of this section does not restrict in any manner the powers of a wildlife protector or marine fisheries inspector or any other law-enforcement officer under G.S. 113-136, 113-137, and other provisions of law in dealing with hunters, fishermen, operators of vessels, and other offenders and suspected offenders.

(g) Issuance of a warning ticket does not constitute evidence of the commission of an offense, but may be used to prevent issuance of a subsequent warning ticket to the same person for a similar offense. (1981, c. 252, s. 1; 1987, c. 827, s. 98; 1989, c. 308.)

§§ 113-141 through 113-145. Reserved for future codification purposes.